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MOTLEY'S ADM'R et al. v. CARSTAIRS, McCALL & CO.

Jan. 16, 1913.

[76 S. E. 948.]

1. Mortgages (§ 38*)—Absolute Deed as Mortgage—Degree of Proof.—An absolute deed can only be shown to be a mortgage by clear, unequivocal, and convincing testimony.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 108-111; Dec. Dig. § 38.* 10 Va.-W. Va. Enc. Dig. 36; 14 Va.-W. Va. Enc. Dig. 736; 15 Va.-W. Va. Enc. Dig. 698.]

2. Mortgages (§ 38*)—Absolute Deed as Mortgage—Burden of Proof.—The burden of proving that a deed absolute on its face is a mortgage rests on the party making such claim.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 95, 96; Dec. Dig. § 36.* 10 Va.-W. Va. Enc. Dig. 35; 14 Va.-W. Va. Enc. Dig. 736; 15 Va.-W. Va. Enc. Dig. 698.]

3. Mortgages (§ 38*)—Absolute Deed as Mortgage—Evidence.—Evidence held insufficient to warrant a finding that an absolute deed was a mortgage.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 108-111; Dec. Dig. § 38.* 10 Va.-W. Va. Enc. Dig. 36; 14 Va.-W. Va. Enc. Dig. 736; 15 Va.-W. Va. Enc. Dig. 698.]

4. Creditors' Suit (§ 23*)—Laches.—Where complainants recovered a judgment in 1886 and endeavored to collect the same by executions issued from time to time until as late as 1904, they were not guilty of laches precluding relief on a bill subsequently filed to subject certain real property alleged to have belonged to the judgment debtor since 1886 to the payment of the judgment.

[Ed. Note.—For other cases, see Creditors' Suit, Cent. Dig. § 99; Dec. Dig. § 23.* 9 Va.-W. Va. Enc. Dig. 94; 14 Va.-W. Va. Enc. Dig. 633; 15 Va.-W. Va. Enc. Dig. 596.]

Appeal from Circuit Court, Pittsylvania County.

Bill by Carstairs, McCall & Co. against Motley's administrator and others. Decree for complainant, and defendants appeal. Affirmed.

Jas. L. Tredway, of Chatham, *R. C. Coleman*, of Danville, Va., and *S. A. Anderson*, of Richmond, Va., for appellants.

Harris & Harris, of Danville, Va., for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.